

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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In the Matter of the Petition of Intrado Inc. for	)	
Arbitration Pursuant to Section 252(b) of the	)	
Communications Act of 1934, as amended, to	)	Docket No. 08-0545
Establish an Interconnection Agreement with	)	
Illinois Bell Telephone Company d/b/a	)	
AT&T Illinois	)	

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**Intrado Inc. Application for Rehearing**

Craig W. Donaldson  
Senior Vice President, Regulatory &  
Government Affairs and Regulatory Counsel

Rebecca Ballesteros  
Assistant General Counsel

Intrado Inc.  
1601 Dry Creek Drive  
Longmont, CO 80503  
720-494-5800 (telephone)  
720-494-6600 (facsimile)

Chérie R. Kiser  
Angela F. Collins  
Cahill Gordon & Reindel LLP  
1990 K Street, NW, Suite 950  
Washington, D.C. 20006  
202-862-8900 (telephone)  
202-862-8958 (facsimile)  
ckiser@cgrdc.com  
acollins@cgrdc.com

Its Attorneys

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**Intrado Inc. Application for Rehearing**

Intrado Inc. (“Intrado”), by its attorneys and pursuant to Section 200.880 of the Rules of Practice, hereby submits its Application for Rehearing of the *Arbitration Decision* issued by the Illinois Commerce Commission (“Commission”) on March 17, 2009 in the above-referenced matter.<sup>1</sup> Specifically, Intrado respectfully requests that the Commission reconsider the *Arbitration Decision*’s erroneous finding that Intrado’s 911/E911 service to be provided to Illinois public safety agencies and public safety answering points (“PSAPs”)<sup>2</sup> does not constitute “telephone exchange service” and therefore is not eligible to interconnect with the Illinois Bell Telephone Company d/b/a AT&T Illinois (“AT&T”) pursuant to Section 251 of the Communications Act of 1934, as amended (“Act”).<sup>3</sup> The Commission’s findings contradict record evidence and violate federal law to the prejudice of Intrado.<sup>4</sup> The *Arbitration Decision* should therefore be reversed.<sup>5</sup>

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<sup>1</sup> Docket No. 08-0545, *Intrado Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Arbitration Decision (Mar. 17, 2009) (“*Arbitration Decision*”).

<sup>2</sup> For ease of reference, Intrado uses the term “PSAP” to refer to any Illinois public safety agency, Emergency Telephone System Board, or other entity that may be responsible for purchasing 911/E911 services to ensure consumers living in the relevant geographic area can reach emergency responders.

<sup>3</sup> 47 U.S.C. § 251. This issue was framed as Issue 1 for arbitration. See *Arbitration Decision* at 3.

<sup>4</sup> *Ramsey Emergency Services, Inc., v. Illinois Commerce Comm’n*, 367 Ill.App.3d 351, 358, 854 N.E.2d 809, 814 (Ill. App. Ct. 2006) (citing *Illinois Power Co. v. Illinois Commerce Comm’n*, 399 Ill. App. 3d 425, 434,

## INTRODUCTION AND OVERVIEW

Intrado will offer 911/E911 service to public safety entities, which in its unique need for reliability and consistency<sup>6</sup> sets it apart from other types of telecommunications services.<sup>7</sup> 911 callers must reach the appropriate designated public safety agency or PSAP. When, for example, a PSAP forwards a 911 call, it doesn't just passively transfer it. Instead, the PSAP makes its own call on a highly coordinated emergency network to other PSAPs or first responders, with the goal of dispatching the closest emergency aid to the caller as soon as possible. Unlike dial tone connections, 911/E911 service must precisely identify and transfer information about the caller's location to ensure an immediate response for direct and misdirected 911 calls.

Interconnection between 911 callers and PSAPs, and among and between PSAPs, therefore warrants more than a simple link between Intrado and AT&T on AT&T's network due to the critical nature of these facilities in ensuring the timely and accurate forwarding of 911 calls to the appropriate first responders.<sup>8</sup> These sorts of arrangements are clearly reflected in AT&T's

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790 N.E.2d 377, 383-384 (2003)); *see also Citizens Utilities Co. v. Illinois Commerce Comm'n*, 124 Ill.2d 195, 206, 529 N.E.2d 510, 515 (1988).

<sup>5</sup> 220 ILCS 5/10-201(e)(iv)

<sup>6</sup> *See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Services*, 14 FCC Rcd 10954, ¶ 2 (1999) (adopting rules to "improve 911 reliability, [and] increase the probability that 911 calls will be efficiently and successfully transmitted to public safety agencies"); Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (expressing intent of statute to establish a "seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs"); *see also Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, 22 FCC Rcd 10541, ¶ 96 (2007) ("*Katrina Order*") (recognizing goal to ensure "Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service"); New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283 (recognizing importance of reliable 911 systems).

<sup>7</sup> *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 5255, ¶ 29 (2008) ("*TRS 911 Order*") (recognizing "the importance of emergency call handling for all Americans"); *E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶ 6 (2005) ("*VoIP E911 Order*") ("the American public has developed certain expectations with respect to the availability of 911 and E911 emergency services").

<sup>8</sup> *TRS 911 Order* ¶ 23 (recognizing the goal to have the most efficient and most reliable 911/E911 network possible regardless of the platform or technology used by end user's service provider or the means by which the individual places the call).

own heavily redundant 911/E911 system. For AT&T to now claim that Intrado should be denied its interconnection rights simply because these arrangements will be used by a competitive service provider does a grave disservice to public safety, and to the promotion of local competition.<sup>9</sup> Intrado, by virtue of its competitive telecommunications services generally, and its 911/E911 services specifically, deserves interconnection on the same terms as any competitor, but also requires interconnection arrangements necessary to produce a system of equal quality, reliability, and functionality to AT&T's. Accordingly, the Commission should reconsider its decision and find that Intrado is entitled to Section 251 interconnection pursuant to Section 251(c), Section 251(a) or both as appropriate.

#### **I. INTRADO'S 911/E911 SERVICE IS ENTITLED TO 251(C) INTERCONNECTION**

Interconnection pursuant to Section 251(c)(2) of the Act requires a carrier to provide "telephone exchange service" or "exchange access" as defined in the Act.<sup>10</sup> These limitations were intended by Congress to prevent long distance carriers from seeking 251(c) interconnection in order to avoid access charges.<sup>11</sup> They were *not* intended to be a litmus test, screening out all but the most traditional forms of communication.<sup>12</sup> As the Federal Communications Commission ("FCC") has made clear, the definitions of "telephone exchange service" and

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<sup>9</sup> It is also inequitable. See 47 U.S.C. § 251(c)(2)(C) (incumbent has a duty to provide interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection").

<sup>10</sup> 47 U.S.C. § 251(c)(2).

<sup>11</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 88 (1996) ("Local Competition Order").

<sup>12</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 31 (1999) ("Advanced Services Order").

“exchange access” must be construed broadly in light of evolving voice and data technologies if the pro-competitive purpose of the Act<sup>13</sup> is to be achieved.<sup>14</sup>

**A. INTRADO’S 911/E911 SERVICE FULFILLS EACH PRONG OF THE “TELEPHONE EXCHANGE SERVICE” DEFINITION**

The *Arbitration Decision* correctly recognizes that the Act’s definition of “telephone exchange service” presents two alternative meanings and a carrier’s service can qualify as telephone exchange service under either alternative.<sup>15</sup> The *Arbitration Decision* also correctly determines that Intrado’s 911 service satisfies the “within a telephone exchange” and “exchange service charge” requirements of the telephone exchange service definition.<sup>16</sup> In addition to these two prongs, Intrado’s service must *either* provide call origination or provide intercommunication to qualify as a telephone exchange service.<sup>17</sup> As the record in this proceeding reflects, Intrado’s service does both, and thus the *Arbitration Decision* must be reversed.<sup>18</sup>

**Call Origination.** Intrado provides call origination in enabling two-way communication between a PSAP and a 911 caller or between a PSAP and another PSAP,<sup>19</sup> which necessarily affords a PSAP the ability to originate and terminate a call.<sup>20</sup> The *Arbitration Decision*

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<sup>13</sup> 47 U.S.C. § 151 *et seq.*

<sup>14</sup> *Advanced Services Order* ¶ 21; *Local Competition Order* ¶¶ 185, 188.

<sup>15</sup> *Arbitration Decision* at 6.

<sup>16</sup> *Arbitration Decision* at 16, 17-18.

<sup>17</sup> *Advanced Services Order* ¶ 30 (finding “intercommunication” is required under Part (B) of the “telephone exchange service” definition even though the language of the Act does not state it).

<sup>18</sup> 220 ILCS 5/10-201(e)(iv); *see also Ramsey Emergency Services, Inc., v. Illinois Commerce Comm’n*, 367 Ill.App.3d 351, 358, 854 N.E.2d 809, 814 (Ill. App. Ct. 2006) (citing *Illinois Power Co. v. Illinois Commerce Comm’n*, 399 Ill. App. 3d 425, 434, 790 N.E.2d 377, 383-384 (2003)); *see also Citizens Utilities Co. v. Illinois Commerce Comm’n*, 124 Ill.2d 195, 206, 529 N.E.2d 510, 515 (1988).

<sup>19</sup> *Advanced Services Order* ¶ 20.

<sup>20</sup> *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd 2736, ¶ 20 (2001) (“DA Call Completion Order”).

incorrectly evaluates Intrado's call transfer capability (or "hookflash").<sup>21</sup> A close examination of PSAP operations manifestly supports the reality that Intrado's service does provide call origination.

Specifically, when a PSAP receives a 911 call and "hookflashes" to obtain a dial tone, it originates a call to a third party through the central office serving as the 911 selective router. This third party is then bridged to the 911 caller, and the PSAP may either disconnect or remain on the line to participate in the subsequent conversation. The PSAP's function in this regard is little different than call transfers in a typical office environment (in which an individual transferring a call obtains a dial tone to do so) or three-way calling (in which the individual responsible for conferencing obtains a dial tone to connect a third-party number).

Similarly, with respect to Intrado's tariff, the *Arbitration Decision* has it backwards.<sup>22</sup> When a transfer occurs, Intrado adds an "additional party," the *911 caller*, to an "existing call" – the call originated by the PSAP to the first responder or other PSAP. It does *not* add the third party to the 911 caller's "existing call." Because the PSAP's *reception* of originated 911 calls is not incompatible with additional *origination* to third parties on behalf of the 911 caller, the *Arbitration Decision*'s attempt to narrowly construe these terms in Intrado's tariff fails.

The *Arbitration Decision* also misconstrues portions of Intrado's witness testimony specifically discussing Intrado's call origination capabilities.<sup>23</sup> The record in this proceeding is clear that Intrado's 911/E911 service allows for the origination and termination of communications:<sup>24</sup>

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<sup>21</sup> *Arbitration Decision* at 8.

<sup>22</sup> *Arbitration Decision* at 8.

<sup>23</sup> *Arbitration Decision* at 8.

<sup>24</sup> 220 ILCS 5/10-201(e)(iv); *see also Ramsey Emergency Services, Inc., v. Illinois Commerce Comm'n*, 367 Ill.App.3d 351, 358, 854 N.E.2d 809, 814 (Ill. App. Ct. 2006) (citing *Illinois Power Co. v. Illinois Commerce*

Q: Using Intrado service, can Intrado's PSAP customer ever pick up the phone and get fresh dial tone and initiate a call to another PSAP or to anyone else?

A: Yes.

Q: How would that happen?

A: Through a call transfer hook flash, either through selective transfer or 10 digit POTS transfer. . . . the call process has two parts. You have the consumer, the citizen who is dialing 911. The PSAP receives the call and then the PSAP originates the transfer. So it's originating the call through the hook flash, either the selective transfer feature or the 10 digit transfer feature and it's originating the call.

....

Q: An Intrado PSAP customer can transfer a call to another PSAP?

A: Yes.

Q: But transferring a call is the not the same as originating a call; is that right?

A: You originate the call within the transfer.

....

Q: An Intrado PSAP customer can also conference in another PSAP on the call; is that right?

A: Yes.

Q: And is it your testimony that conferencing in another PSAP is the same as originating a call?

A: If you use the hook flash, similar to what I described on the types of transfers and you keep the originating caller on the phone, along with the extended agency on the phone, yes.<sup>25</sup>

Thus, consistent with the Ohio commission's findings, "the capability of a PSAP to call to another PSAP and engage in two-way communications with 911 callers satisfies the call

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*Comm'n*, 399 Ill. App. 3d 425, 434, 790 N.E.2d 377, 383-384 (2003)); *see also Citizens Utilities Co. v. Illinois Commerce Comm'n*, 124 Ill.2d 195, 206, 529 N.E.2d 510, 515 (1988).

<sup>25</sup> Transcript at 109-13 (Spence-Lenss).



origination and termination requirement.”<sup>26</sup> The Commission’s determination that Intrado’s 911/E911 service does not provide call origination should therefore be reversed.<sup>27</sup>

***Intercommunication.*** The *Arbitration Decision*’s finding that Intrado’s 911/E911 service “enables communication solely between end-users and a designated PSAP (with possible call transfer to another PSAP)” ignores the reality of the 911 service to be offered by Intrado.<sup>28</sup> The PSAP is purchasing 911 service from Intrado so it can receive calls from *all* 911 callers programmed to reach the caller’s designated PSAP, *i.e.*, so that the PSAP can intercommunicate with those 911 callers. As required by the FCC’s *DA Call Completion Order*, Intrado’s 911 service interconnects all 911 callers in a specific geographic area to the PSAP responsible for receiving those 911 calls.<sup>29</sup> Therefore, the relevant inquiry is whether Intrado’s customer (the PSAP end user) purchasing the 911 service will receive the intercommunication it seeks with the 911 callers needing to reach emergency assistance. It makes no difference whether the “end-user” can communicate with any other entity via 911 dialing; it only matters whether the PSAP can communicate with any person dialing 911 who needs to reach that designated PSAP.

As the FCC has determined, a service satisfies the “intercommunication” requirement “as long as it provides customers with the capability of intercommunicating with other subscribers.”<sup>30</sup> Intrado’s 911 service ensures that its PSAP customers are able to communicate

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<sup>26</sup> Ohio Case No. 07-1280-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934 as amended, to Establish an Interconnection Agreement with the Ohio Bell Telephone Company dba AT&T Ohio*, Arbitration Award at 16 (Mar. 4, 2009) (“*AT&T Ohio Arbitration Award*”).

<sup>27</sup> 220 ILCS 5/10-201(e)(iv); *see also Ramsey Emergency Services, Inc., v. Illinois Commerce Comm’n*, 367 Ill.App.3d 351, 358, 854 N.E.2d 809, 814 (Ill. App. Ct. 2006) (citing *Illinois Power Co. v. Illinois Commerce Comm’n*, 399 Ill. App. 3d 425, 434, 790 N.E.2d 377, 383-384 (2003)); *see also Citizens Utilities Co. v. Illinois Commerce Comm’n*, 124 Ill.2d 195, 206, 529 N.E.2d 510, 515 (1988).

<sup>28</sup> *Arbitration Decision* at 13.

<sup>29</sup> *DA Call Completion Order* ¶¶ 17, 21; *Advanced Services Order* ¶¶ 17, 23, 30.

<sup>30</sup> *Advanced Services Order* ¶ 23.

with those making 911 calls to the designated PSAP. By virtue of Intrado's 911 service, PSAPs are able to communicate with others within a local calling area, which is a hallmark of "intercommunication."<sup>31</sup> Intrado's 911/E911 service fulfills the "key component" of telephone exchange service<sup>32</sup> by allowing Illinois consumers to intercommunicate with PSAPs and local emergency personnel within relevant geographical areas.

The *Arbitration Decision* also presumes that Intrado's intercommunicative abilities are limited to call forwarding.<sup>33</sup> As has been previously demonstrated, call forwarding encompasses call origination, the purposeful use of a selective router by the PSAP to bridge calls between a 911 caller and the appropriate first responder. Intercommunication may take the form of PSAP-to-PSAP communication, which meets the *Advanced Services Order*'s standard that the "intercommunication" is satisfied "as long as [a service] provides customers with the capability of intercommunicating with other subscribers."<sup>34</sup> It may also involve resolving a misdirected mobile emergency call or take the form of a three-way conference between police dispatchers, PSAP operators, and an individual in distress. This 911 system is naturally employed for one-way communications as acknowledged by the *Arbitration Decision*<sup>35</sup> and required by Illinois regulations,<sup>36</sup> and thus, the need to keep emergency lines clear for 911 callers makes the *Arbitration Decision*'s criticism of a passive 911/E911 system fundamentally flawed.<sup>37</sup>

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<sup>31</sup> *DA Call Completion Order* ¶ 21.

<sup>32</sup> *Advanced Services Order* ¶ 30.

<sup>33</sup> *Arbitration Decision* at 12-13.

<sup>34</sup> *Advanced Services Order* ¶ 23.

<sup>35</sup> *Arbitration Decision* at 7.

<sup>36</sup> 83 ILL. ADM. CODE 725.500(a), (d).

<sup>37</sup> Note, however, that Intrado's 911/E911 system is capable of two-way *communication*, even if it does not carry two-way *traffic*. The former consideration is vital for intercommunicative purposes. *See Advanced Services Order* ¶ 20 (the FCC "has long interpreted the traditional telephone exchange definition to refer to 'the provision of individual two-way voice communication by means of a central switching complex to interconnect all subscribers within a geographic area'").

The concepts of “geographical area” and “community of interconnected customers” ties into these origination and conferencing abilities. Intrado’s 911/E911 system is predicated on connecting callers in need of emergency assistance to the appropriate police, fire, or medical authorities. The “appropriate” authorities who may best satisfy this “need” for rapid assistance are invariably those closest to the caller. This is the goal of the evolving 911 system - a precise determination of the caller’s location and an accurate transmittal of it to the nearest first responders.<sup>38</sup> In this context, any contention that Intrado’s service area differs from that offered by a local exchange area is meaningless. It defies the practical logic of the 911 system; a fire engine from two towns over may be reached by a local call, but arrive too late to extinguish a rapidly burning home. It contradicts state and local government efforts to establish meaningful PSAP service areas. It also ignores deliberate design choices inherent in the 911 system.<sup>39</sup> Just as expanded area service (“EAS”) and expanded local calling service (“ELCS”) have developed to ensure that all members of a “community of interest” can reach other subscribers without incurring a toll charge,<sup>40</sup> so Intrado’s service employs selective routers to ensure that callers and PSAPs can contact one another regardless of ILEC exchange boundaries.

When assessed according to the unique organization and purpose of the 911 system, Intrado’s service does “permit a community of interconnected customers to make calls to one

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<sup>38</sup> See, e.g., *Wireless E911 Location Accuracy Requirements*, 22 FCC Rcd 20105, ¶¶ 2-3 (2007) (“the critical first step in a comprehensive examination of E911 location accuracy and reliability... [is the] possible establishment of more stringent, uniform location accuracy requirements across technologies, and the continuing development of technologies that might enable carriers to provide public safety with better information for locating persons in the event of an emergency”).

<sup>39</sup> These design choices also separate directory assistance service from 911 service. The expectation of the respective callers makes a comparison between the two services untenable - the directory assistance caller seeks intangible information on a nationwide scale, as compared to the 911 caller who expects physical assistance on a local basis.

<sup>40</sup> See generally *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, 12 FCC Rcd 10646 (1997).

another”<sup>41</sup> - a “community of interest” of 911 callers, PSAPs, and first responders located in the relevant geographical area.<sup>42</sup> The *Arbitration Decision*’s portrayal of Intrado’s “community of interest” mischaracterizes both the FCC’s position on 911/E911 service and the overall design of Intrado’s system.<sup>43</sup> All 911 callers whether fixed or nomadic within the PSAP community of interest can be connected to the designated PSAP. Thus, Intrado’s service provides the capability for “cross-communication among a multiplicity of end-points.”<sup>44</sup>

PSAP-to-PSAP connections also are an important component of Intrado’s system, especially in the event of misdirected mobile emergency calls. Intrado has the ability to route 911 calls from multiple callers to a PSAP and from one PSAP to another (including non-subscriber PSAPs) to ensure that the caller is ultimately connected with the closet source of emergency aid. Accordingly, Intrado’s 911/E911 service provides intercommunication, and thus meets the definition of “telephone exchange service” under the Act.

## **B. INTRADO’S 911/E911 SERVICE IS ANALOGOUS TO “EXCHANGE ACCESS” SERVICE**

The *Arbitration Decision* appears to characterize Intrado’s 911/E911 service as a service providing the “transport of 911 calls from an ILEC’s 911 tandem to a terminating PSAP.”<sup>45</sup> While Intrado disagrees with that characterization,<sup>46</sup> the Commission appears to view Intrado’s service similar to exchange access service. To the extent Intrado’s 911 service to

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<sup>41</sup> *DA Call Completion Order* ¶ 17.

<sup>42</sup> *VoIP E911 Order* ¶ 13 n.32 (“unlike normal phone calls, 911 calls are routed based on the calling number (which is linked to a particular geographic area and political jurisdiction), not the called number”).

<sup>43</sup> *Arbitration Decision* at 14.

<sup>44</sup> *Arbitration Decision* at 14.

<sup>45</sup> *Arbitration Decision* at 15.

<sup>46</sup> Intrado Brief on Exceptions at 5.

PSAPs is analogous to exchange access service, this further supports that Intrado is entitled to Section 251(c) interconnection on that basis as well.<sup>47</sup>

In the Act, “exchange access” is defined as “the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.”<sup>48</sup> A carrier providing exchange access service provides local access to other carriers (or to itself) to originate and terminate toll or long distance calls.<sup>49</sup> Intrado’s 911 service does not fall squarely within the definition of “exchange access” because 911 services are not toll services.<sup>50</sup> However, Intrado’s 911 service performs the same function as an exchange access service because it provides other carriers (and itself when acting as a local exchange carrier) access to its PSAP customers for the transmission and completion of 911 calls.

The inclusion of the “telephone exchange service” and “exchange access” limitations in 251(c)(2) were intended to ensure long distance carriers did not attempt to avail themselves of 251(c) interconnection in an effort to circumvent access charges.<sup>51</sup> The FCC determined there was “no convincing justification for treating providers of exchange access services” differently than providers of telephone exchange services.<sup>52</sup> Indeed, the FCC found that applying separate regulatory regimes to providers of telephone exchange services and those providing only exchange access services would be “undesirable in light of the new procompetitive paradigm” found in Section 251 of the Act, especially when such carriers would be “using essentially the

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<sup>47</sup> *Local Competition Order* ¶ 185 (“parties offering only exchange access are permitted to seek interconnection pursuant to section 251(c)(2)”).

<sup>48</sup> 47 U.S.C. § 147(16).

<sup>49</sup> *Local Competition Order* ¶ 191.

<sup>50</sup> Transcript at 109, lines 3-5 (Spence-Lenss).

<sup>51</sup> *Local Competition Order* ¶ 188.

<sup>52</sup> *Local Competition Order* ¶ 185.

same equipment to transmit and route traffic.”<sup>53</sup> Accordingly, Section 251(c)(2) interconnection rights were specifically extended to “exchange access” providers. Intrado’s 911 service to PSAPs is also functionally no different from exchange access service, and therefore is entitled to the same Section 251(c)(2) rights.

**C. INTRADO’S 911/E911 SERVICE IS COMPARABLE TO OTHER NON-TRADITIONAL COMMUNICATIONS SERVICES THAT MEET THE DEFINITION OF TELEPHONE EXCHANGE SERVICE**

In its *Advanced Services Order*, the FCC determined that “telephone exchange service [is] not limited to traditional voice telephony, but include[s] non-traditional ‘means of communicating information within a local area.’”<sup>54</sup> Contrary to the *Arbitration Decision*’s findings, both directory assistance and DSL services can be directly analogized to Intrado’s 911/E911 service.<sup>55</sup>

Particular electronic directory information services have been characterized by the FCC as telephone exchange services; “the call-completion service offered by many competing [directory assistance] providers constitutes intercommunication because it permits a community of interconnected customers to make calls to one another in the manner prescribed by the statute.”<sup>56</sup> As previously noted, the disparate purposes of directory assistance and 911 services account for divergent “communities of interest.” Intrado’s service will in fact be wholly interconnected with AT&T’s ILEC exchange through the use of selective routers. Calls made to particular subscribing PSAPs or by such PSAPs will only be limited in that they will be based on the 911 caller’s geographic location as necessary to contact the appropriate first responders.

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<sup>53</sup> *Local Competition Order* ¶ 185.

<sup>54</sup> *Advanced Services Order* ¶ 17.

<sup>55</sup> *Arbitration Decision* at 13, 16.

<sup>56</sup> *DA Call Completion Order* ¶ 17.

Comparisons between Intrado’s 911 service and DSL service should also be rejected.<sup>57</sup> The *Arbitration Decision*’s analysis is inaccurate and ignores the reality of DSL technology. While an “additional line” may not be required for DSL service, DSL is separate and distinct from the voice portion of the local loop, which is evidenced by the existence of line splitting and line sharing technologies. Line splitting allows one carrier to provide voice service over the same loop that another carrier uses to provide DSL service.<sup>58</sup> Similarly, line sharing permits a competitor to provide DSL service over the same loop that an ILEC uses to provide voice service.<sup>59</sup> In addition, any reliance on whether an “additional line” is required overlooks the FCC’s determination that the “key criterion for determining whether a service falls within the scope of the telephone exchange service definition is whether it permits ‘intercommunication’.”<sup>60</sup> The *Arbitration Decision*’s determination that Intrado’s 911 service is not comparable to DSL service must therefore be rejected as irrelevant.

## II. ARBITRATION UNDER SECTION 251(A) IS APPROPRIATE

The *Arbitration Decision* misinterprets the law when it finds that the Commission is unable to conduct a Section 251(a) arbitration based on the current record.<sup>61</sup> Because of AT&T’s dominance over the public switched telephone network (“PSTN”),<sup>62</sup> Intrado must be able to invoke all the provisions of Sections 251/252, which were intended to aid competitors

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<sup>57</sup> *Arbitration Decision* at 13.

<sup>58</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al.*, 20 FCC Rcd 14853, ¶ 54 n.157 (2005).

<sup>59</sup> *Id.*

<sup>60</sup> *Advanced Services Order* ¶ 26.

<sup>61</sup> *Arbitration Decision* at 22.

<sup>62</sup> *See, e.g.*, Spence-Lenss Direct Testimony at 10.

with unequal bargaining power<sup>63</sup> in avoiding unreasonable delays in entering incumbent-dominated markets.<sup>64</sup> As the *Arbitration Decision* correctly recognizes, the Commission has previously arbitrated interconnection issues under the rubric of 251(a),<sup>65</sup> and should do so again here.

The *Arbitration Decision* incorrectly finds that Section 251(a) was never an open issue in this proceeding.<sup>66</sup> The issue of whether Intrado is entitled to Section 251(c) interconnection or some other form of interconnection has been discussed at length in this proceeding. AT&T acknowledged that its proposal for a “commercial agreement” could be a Section 251(a) agreement.<sup>67</sup> Moreover, AT&T urged the Commission to adopt the findings of the Florida commission, which determined that AT&T and Intrado could negotiate an interconnection agreement pursuant to Section 251(a) in Florida.<sup>68</sup>

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<sup>63</sup> *Local Competition Order* ¶ 41 (noting “significant imbalances in bargaining power”).

<sup>64</sup> See, e.g., *Atlantic Alliance Telecommunications, Inc. v. Bell Atlantic*, 2000 U.S. Dist. LEXIS 19649, 99-CV-4915 (ARR) (E.D. Va. 2000) (noting that “[t]he tight schedule set out in the Act manifests an intention of Congress to resolve disputes expeditiously,” that the strict timelines contained in the Telecommunications Act indicate Congress’ desire to open up local exchange markets to competition without undue delay”) (quoting *AT&T Communications Sys. v. Pacific Bell*, 203 F.3d 1183, 1186 (9th Cir. 2000)) and that “the legislative history explains that the purpose of the Act is ‘to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition’” (quoting H.R. Conf. Rep. No. 104-458, at 113 (1996) reprinted in 1996 U.S.C.C.A.N. 10, 124)).

<sup>65</sup> Docket No. 05-0402, *Sprint Communications L.P. d/b/a Sprint Communications Company L.P. Petition for Consolidated Arbitration with Certain Illinois Incumbent Local Exchange Carriers pursuant to Section 252 of the Telecommunications Act of 1996*, Arbitration Decision (Nov. 8, 2005), *aff’d Harrisonville Telephone Company, et al. v. Illinois Commerce Commission, et al.*, Civil No. 06-73-GPM, Memorandum Opinion and Order (S.D. Ill. Sept. 5, 2007).

<sup>66</sup> *Arbitration Decision* at 22-23.

<sup>67</sup> Transcript at 132, lines 12-16 (Pellerin) (“AT&T has never taken the position that it was not willing to negotiate a commercial agreement with Intrado. Whether you refer to that as 251A agreement or not, I don’t have an opinion on that.”); Transcript at 139, lines 8-19 (Pellerin) (“Q: Does AT&T have any obligation to negotiate or interconnect with Intrado outside of Section 251? A: Well, I think we are here talking about Section 251C interconnection negotiations and arbitration. Beyond that, all telecommunications carriers have obligations under 251A. Q: So the commercial agreement that you believe should be entered into would be pursuant to 251A? A: Potentially.”).

<sup>68</sup> Transcript at 132, lines 7-11 (Pellerin) (“Q: The Staff recommendation, however, did determine that the parties can negotiate an interconnection agreement pursuant to Section 251A; is that correct? A: That’s my understanding.”).



The Commission's ability to render its decision on interconnection pursuant to authorities other than those invoked by the parties is well-established. Federal, state, and public commission holdings all attest to the Commission's ability to apply any applicable law to its decision,<sup>69</sup> such that "the Commission is not barred by mere omission from applying applicable law."<sup>70</sup> Thus, "[e]ven though neither party has raised an issue relating to interconnection under 251(a), [the Commission is] not prohibited from applying Section 251(a)."<sup>71</sup> Mindful of the fact

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<sup>69</sup> See, e.g., *Painter v. Shalala*, 97 F.3d 1351, 1359 (10th Cir. 1996) ("Since *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803), the Supreme Court has interpreted the Constitution to give to the judiciary an important, albeit limited, role in the structure of the government. First, federal courts fulfill their role *only* by adjudicating cases or controversies before them. Second, when faced with a proper case or controversy, courts, both state and federal, must apply all applicable laws in rendering their decisions"); *Conrail v. Metropolitan*, 1996 U.S. Dist. LEXIS 3519, \*64 (S.D.N.Y. 1996) (determining that arbitration panel did not exceed its authority because "[i]t does not appear that the panel refused to apply or simply ignored any clearly applicable, governing legal principle"); *Young v. Blueshield*, No. C07-2008RSL, 2008 WL 4585260, \*2 (W.D. Wash. Oct. 14, 2008) ("Plaintiffs argue that the Court erred in relying on the mailbox rule because neither party argued that the rule applied. Courts do not err in applying applicable law, even if the parties fail to address it themselves"); *Contractor Industries v. Zerr*, 241 Pa. Super. 92, 107, n.6 (1976) (analogizing, for the proposition that a builder's failure to obtain a building permit amounts to a contractual breach between property owner and contractor, to the Uniform Commercial Code, despite the fact that "neither party has argued that the applicable law in the instant case is embodied in the Uniform Commercial Code . . . because they conceived the swimming pool [home improvement at issue] to be a 'fixture' of the type to which the Code does not apply") (internal citations omitted); *City of Pittsburgh's Ordinance Imposing Time Limits for Crossing Blocking and Speed Restrictions Invalidated to the Extent that It Attempts to Regulate Matters within Primary Jurisdiction of the Commission*, 1974 Cal. PUC LEXIS 1491, \*6 (1974) ("Moreover the Commission not only has the power, but it has the duty, to apply applicable law to the facts of a proceeding before it.") (citing *Northern California Power Agency v Public Utilities Com.*, 5 Cal 3d 370 (1971); *People v Western Airlines, Inc.*, 42 Cal 2d 621, 630-33 (1954)).

<sup>70</sup> Ohio Case No. 08-537-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Entry on Rehearing at 11-12 (Jan. 14, 2009) ("*Ohio CBT Rehearing Award*"); see also *Young v. Blueshield*, No. C07-2008RSL, 2008 WL 4585260, at \*2 (W.D. Wash. Oct. 14, 2008) ("Courts do not err in applying applicable law, even if the parties fail to address it themselves."); *Painter v. Shalala*, 97 F.3d 1351, 1359 (10th Cir. 1996) ("courts, both state and federal, must apply all applicable laws in rendering their decisions").

<sup>71</sup> *Ohio AT&T Arbitration Award* at 16; see also California Decision 06-08-029, *Application by Pacific Bell Telephone Company d/b/a SBC California for Arbitration of an Interconnection Agreement with MCI Metro Access Transmission Services LLC Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Opinion Approving Arbitrated Interconnection Agreement as Amended (C.P.U.C. Aug. 24, 2006) ("An indirect interconnection right is given to each [competitive local exchange carrier] that the [incumbent local exchange carrier] cannot by itself deny or vacate. The [incumbent local exchange carrier] has the duty to negotiate the provision of interconnection, including indirect interconnection, and if negotiations fail, it may be arbitrated."); Iowa Docket No. ARB-05-2, *Sprint Communications Company L.P. v. Ace Communications Group, et al.*, Arbitration Order (I.U.B. Mar. 24, 2006) (finding rural carriers must interconnect with Sprint pursuant to Section 251(a) and arbitrating those interconnection agreements); New York Cases 05-C-0170, 05-C-0183, *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Inter-carrier Agreement with Independent Companies, et al.*, Order Resolving Arbitration Issues (N.Y.P.S.C. May 24, 2005)

that Intrado is a “telecommunications carrier” offering “telecommunications service” under federal law, the Commission is able to choose the legal theory that best addresses the outstanding issue of interconnection rights under the interconnection agreement and that will most benefit Illinois public safety agencies.<sup>72</sup>

Indeed, the Act specifically empowers state commissions to address matters concerning the implementation of interconnection agreements,<sup>73</sup> a designation which has been continuously recognized by the FCC and the courts in regards to interconnection negotiation, arbitration, interpretation, and enforcement.<sup>74</sup> The public interest further warrants state commission oversight of Intrado’s entire interconnection process for reasons of public safety,<sup>75</sup> as the

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(finding that Sprint was entitled to interconnection under Section 251(a) and arbitrating those interconnection agreements); Order Denying Rehearing (N.Y.P.S.C. Aug. 24, 2005), *aff’d Berkshire Telephone Corp., et al. v. Sprint Communications Company L.P.*, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. Oct. 30, 2006); *see also* Intrado Brief on Exceptions at 8.

<sup>72</sup> Docket No. 04-0406, *Ramsey Emergency Services, Inc. Application for a Certificate of Local Authority to Operate as a Provider of Telecommunications Services in All Areas in the State of Illinois*, Order at 13 (May 17, 2005), *aff’d Ramsey Emergency Services, Inc. v. Illinois Commerce Commission*, 367 Ill. App. 3d 351 (2006).

<sup>73</sup> 47 U.S.C. § 252; *see also AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999) (finding that Section 252 of the Act entrusts state commissions jurisdiction over interconnection agreements).

<sup>74</sup> *See, e.g., Local Competition Order* ¶ 137 (“state commissions will make critical decisions concerning a host of issues involving rates, terms, and conditions of interconnection and unbundling arrangements, and exemption, suspension, or modification of the requirements in section 251); *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 2109, ¶ 53 (2005) (stating that “as the Supreme Court has recognized” that Sections 251 and 252 “contemplate a federal-state partnership in the development of competition in the local exchange market”); *BellSouth Telecomm., Inc. v. MCI Metro Access Transmission Servs., Inc.*, 317 F.3d 1270, 1273-74, 1277 (11th Cir. 2003); *Global Naps, Inc. v. FCC*, 291 F.3d 832, 838 (D.C. Cir. 2002) (noting that it is “the state agency’s responsibility to make a determination – that is, to mediate, to arbitrate, to approve, and (possibly) to interpret and enforce an interconnection agreement”).

<sup>75</sup> *See, e.g., Texas Docket No. 23378, Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement with SBC Communications*, Order No. 8 Denying Motion to Dismiss, 12 (Jan. 4, 2002) (“there are clear public policy implications to the accurate and timely delivery of 9-1-1 calls, which policies underscore [the Texas] Commission’s exercise of jurisdiction”); Ohio Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Finding and Order at Finding 7 (Feb. 5, 2008) (“*Ohio Certification Order*”), Order on Rehearing (Apr. 2, 2008) (“*Ohio Certification Rehearing Order*”) (finding that “highlight[ing] the importance of regulating competitive emergency services telecommunications carriers in light of the significant public interest surrounding the provision of 9-1-1 service”); Ohio Case No. 07-1216-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Award at 15

Commission has previously recognized.<sup>76</sup> The Commission has a unique role in this regard given the FCC's pronouncements on Sections 251 and 252 of the Act<sup>77</sup> and the states' long-standing importance in fostering competitive telecommunications markets.<sup>78</sup> The *Arbitration Decision*, however, virtually ignores the Commission's authority under Sections 251(e), 253, and 706, as well as its prior determinations regarding the importance of oversight in the provision of 911/E911 services.<sup>79</sup> The *Arbitration Decision* should therefore be reversed for the Commission's failure to consider this important and applicable federal law.<sup>80</sup>

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(Sept. 24, 2008) (“*Ohio Embarq Arbitration Award*”) (determining that “Commission oversight and resolution of disputes raised in [an arbitration] proceeding are of significant public interest due to the fact that the identified issues directly impact the provisioning of uninterrupted emergency 9-1-1 service in the state of Ohio”).

<sup>76</sup> Docket No. 00-0769, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision at 8 (Mar. 21, 2001) (“*SCC Order*”); Docket No. 04-0406, *Ramsey Emergency Services, Inc. Application for a Certificate of Local Authority to Operate as a Provider of Telecommunications Services in All Areas in the State of Illinois*, Order at 13 (May 17, 2005), *aff’d Ramsey Emergency Services, Inc. v. Illinois Commerce Commission*, 367 Ill. App. 3d 351 (2006).

<sup>77</sup> *American Communications Services, Inc.; MCI Telecom. Corp.; Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecom. Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as amended*, 14 FCC Rcd 21579, ¶ 35 (1999).

<sup>78</sup> *The Public Utility Commission of Texas; The Competition Policy Institute, IntelCom Group (USA), Inc. and ICG Telecom Group, Inc., AT&T Corp., MCI Telecommunications Corporation, and MFS Communications Company, Inc.; Teleport Communications Group, Inc.; City of Abilene, Texas; Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, 13 FCC Rcd 3460, ¶ 52 (1997).

<sup>79</sup> See, e.g., Intrado Brief at 9-11, 28-30.

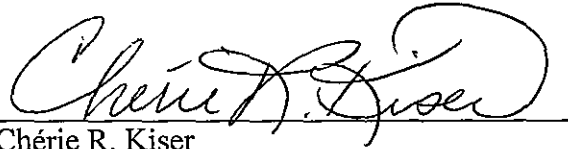
<sup>80</sup> 220 ILCS 5/10-201(e)(iv); see also *Ramsey Emergency Services, Inc., v. Illinois Commerce Comm’n*, 367 Ill.App.3d 351, 358, 854 N.E.2d 809, 814 (Ill. App. Ct. 2006) (citing *Illinois Power Co. v. Illinois Commerce Comm’n*, 399 Ill. App. 3d 425, 434, 790 N.E.2d 377, 383-384 (2003)); see also *Citizens Utilities Co. v. Illinois Commerce Comm’n*, 124 Ill.2d 195, 206, 529 N.E.2d 510, 515 (1988).

## CONCLUSION

For the foregoing reasons, Intrado respectfully requests that the Commission reconsider its findings in the *Arbitration Decision* and find that Intrado is entitled to interconnect with AT&T pursuant to Section 251(c), 251(a), or both.

Respectfully submitted,

**INTRADO INC.**



Craig W. Donaldson  
Senior Vice President, Regulatory &  
Government Affairs and Regulatory Counsel

Rebecca Ballesteros  
Assistant General Counsel

Intrado Inc.  
1601 Dry Creek Drive  
Longmont, CO 80503  
720-494-5800 (telephone)  
720-494-6600 (facsimile)

Chérie R. Kiser  
Angela F. Collins  
Cahill, Gordon & Reindel LLP  
1990 K Street, NW, Suite 950  
Washington, D.C. 20006  
202-862-8900 (telephone)  
202-862-8958 (facsimile)  
ckiser@cgrdc.com  
acollins@cgrdc.com

Its Attorneys

Dated: April 16, 2009

**CERTIFICATE OF SERVICE**

I, Chérie R. Kiser, certify that on this 16th day of April 2009, I electronically filed a copy of the foregoing Application for Rehearing of Intrado Inc. with the Clerk of the Illinois Commerce Commission and served a copy on the following via electronic mail.

/s/ Chérie R. Kiser

Chérie R. Kiser

David Gilbert  
Administrative Law Judge  
Illinois Commerce Commission  
160 N. LaSalle Street  
Suite C-800  
Chicago, IL 60601  
E-mail: dgilbert@icc.illinois.gov

Bonita Benn  
Administrative Law Judge  
Illinois Commerce Commission  
160 N. LaSalle Street  
Suite C-800  
Chicago, IL 60601  
E-mail: bbenn@icc.illinois.gov

Mark Ortlieb  
Nancy Hertel  
AT&T Illinois  
225 West Randolph Street  
25<sup>th</sup> Floor  
Chicago, IL 60606  
E-mail: mo2753@att.com  
E-mail: nw1783@att.com

J. Tyson Covey  
Angela D. O'Brien  
Mayer, Brown LLP  
71 S. Wacker Drive  
Chicago, IL 60606-3441  
E-mail: jcovey@mayerbrown.com  
E-mail: aobrien@mayerbrown.com

Matthew Harvey  
Megan McNeill  
Illinois Commerce Commission  
160 N. LaSalle Street  
Chicago, IL 60601  
E-mail: mharvey@icc.illinois.gov  
E-mail: mmcneill@icc.illinois.gov

Marci Schroll  
Telecommunications Division  
Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, IL 62701  
E-mail: mschroll@icc.illinois.gov